

Chapter V

The Judicial Department

The Courts

The Constitution provides that the judicial power of the State of California is vested in its Supreme, appellate, superior, municipal, and justice courts, and that all these courts are courts of record. A court of record is one wherein its proceedings are taken down and kept as a permanent official record.¹

The function of the courts of the State of California is to provide for the orderly settlement of disputes between parties in controversy, whether they be individuals or private or governmental entities; they determine the guilt or innocence of those who are accused of violating the laws; they are the instrumentality for settling the estates of deceased persons; they serve to preserve the distinction between the branches of government, as provided by the Constitution, and they protect the rights of individuals from encroachment by state or local government.

In terms of numbers of courts (220) and authorized judgeships (1,554: 7 Supreme Court; 88 court of appeals; 789 superior court; 623 municipal court; and 47 justice court judges), the California judicial system is one of the largest in the world.²

The Supreme Court

The highest court in the state is the Supreme Court. The Supreme Court is the final interpreter of the laws of the State of California (both statutory and common law) and its decisions may only be reversed by the U.S. Supreme Court in instances where it is determined that California law conflicts with the U.S. Constitution. The decisions of this court are binding on all the other courts of California.

The court is composed of a Chief Justice and six Associate Justices.³ The Justices of the Supreme Court are elected at statewide elections and serve for a term of 12 years.⁴ No person is eligible for appointment or election as a Justice of the Supreme Court unless he or she shall have been a member of the California State Bar or has served as a judge of a court of record of the State of California for 10 years immediately preceding his or her appointment or election.⁵

The work of the Supreme Court is primarily confined to hearing and deciding appeals brought from the lower courts. In some special instances, such as habeas corpus petitions, proceedings may be initiated in the Supreme Court. In these instances, the court is said to

¹ *Constitution*, Article VI, Section 1.

² Figures supplied by Administrative Office of the Courts. Of the 1,554 authorized judgeships, 1,519 were filled as of 2/94.

³ *Constitution*, Article VI, Section 2.

⁴ *Constitution*, Article VI, Section 16(a).

⁵ *Constitution*, Article VI, Section 15.

be exercising original jurisdiction. In all cases where a judgment of death has been pronounced, an appeal is automatically taken directly to the Supreme Court.⁶

Regular sessions of the court are held in San Francisco, Los Angeles and Sacramento. All the decisions of the court are published in the official case reporting volumes, California Reports,⁷ as well as in a privately published series, West's California Reporter.

Courts of Appeal

The justices of the courts of appeal are elected by the voters within their respective districts for terms of 12 years.⁸ The qualifications for appellate court justices are the same as those for Justices of the Supreme Court.⁹

It is interesting to note that neither the Constitution of 1849 nor the Constitution of 1879 made provisions for courts of appeal. At that time appeals from trial courts were made directly to the Supreme Court. By 1904, however, the volume of appellate litigation had increased to such an extent that a constitutional amendment was adopted authorizing the creation of three district courts of appeal to relieve the workload of the Supreme Court.

The 1904 constitutional amendments gave the legislature the power to divide the state into more than the three original appellate districts, each district containing a court of appeal with one or more divisions.¹⁰ Since 1904, the legislature has exercised this power three times: in 1929 to create the Fourth District Court of Appeal;¹¹ in 1961 to create the Fifth District Court of Appeal;¹² and in 1981 to create the Sixth District Court of Appeal.¹³ Should any new district or division be created, the Governor must appoint not less than three judges to service that district or division.¹⁴

At the present time, the Court of Appeal for the First District, consists of four divisions of four judges each and one division of three judges; in the Second District there are five divisions of four judges each and two divisions of three judges each; the Third District has one division of eight judges; the Fourth District consists of one division of eight judges and two divisions of five judges; the Fifth District has one division of nine judges; and the Sixth District is made up of one division with six judges.¹⁵

Counties embraced in the various district courts of appeal are as follows:

First Appellate District: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Solano, and Sonoma.

⁶ Constitution, Article VI, Section 11.

⁷ Constitution, Article VI, Section 14; Government Code, Section 68902; California Rules of Court, Rule 976.

⁸ Constitution, Article VI, Section 16(a).

⁹ Constitution, Article VI, Section 15.

¹⁰ Constitution, Article VI, Section 3.

¹¹ Statutes of 1929, Chapter 691; Government Code, Section 69104.

¹² Statutes of 1961, Chapter 845; Government Code, Section 69105.

¹³ Statutes of 1981, Chapter 959; Government Code, Section 69106.

¹⁴ Constitution, Article VI, Section 3; Government Code, Section 69107.

¹⁵ Government Code, Sections 69101–69106.

Second Appellate District: Los Angeles, San Luis Obispo, Santa Barbara, and Ventura.

Third Appellate District: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, and Yuba.

Fourth Appellate District: Imperial, Inyo, Orange, Riverside, San Bernardino, and San Diego.

Fifth Appellate District: Fresno, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, and Tuolumne.

Sixth Appellate District: Santa Clara, Santa Cruz, Monterey, and San Benito.¹⁶

The courts of appeal exercise appellate jurisdiction over the cases in which a superior court exercises original jurisdiction, except when the judgment of death has been pronounced.¹⁷ Additionally, the courts of appeal, like the Supreme Court, exercise original jurisdiction in certain types of proceedings.¹⁸

Superior Courts

The Constitution provides that there shall be a superior court in each county of the state. The Legislature designates the number of judges for the superior court in each county, and may provide that one or more of these judges serve on more than one superior court.¹⁹

Judges of the superior court are elected by the voters of their respective counties for terms of six years.²⁰

The qualifications for the office of superior court judge are the same as those for the Justices of the Supreme Court.²¹

The superior courts are commonly referred to as trial courts. They are the courts of general jurisdiction in our judicial system.

The superior court has original jurisdiction in all cases except those given to the other trial courts by statute. They are empowered to hear appeals from the decisions of the municipal and justice courts.²²

The number of superior court judges is usually dependent upon the population of the county involved. For example, Los Angeles County is entitled to over 200 judges of the superior court, while Lake County has but two.²³

Municipal and Justice Courts

An amendment to Article VI of the Constitution, adopted in 1950, and subsequent legislation have given California a simple and uniform inferior court system. The lower courts in California consist of municipal and justice courts. Each county of the state is divided into judicial districts by the board of supervisors. In each

¹⁶ *Government Code*, Section 69100.

¹⁷ *Constitution*, Article VI, Section 11.

¹⁸ *Constitution*, Article VI, Section 10.

¹⁹ *Constitution*, Article VI, Section 4; *Government Code*, Sections 69580–69615.

²⁰ *Constitution*, Article VI, Section 16(c).

²¹ *Constitution*, Article VI, Section 15.

²² *Constitution*, Article VI, Sections 10, 11.

²³ *Government Code*, Sections 69586, 69585.7.

judicial district, there is either a municipal court or a justice court depending upon the population of the district. In districts with more than 40,000 population there is a municipal court, and in districts with a lesser population there is a justice court.²⁴

Judges of the municipal courts and judges of justice courts are elected by the voters of their respective districts for terms of six years.²⁵

To be eligible for election or appointment as a municipal court judge, or as a judge of a justice court, the candidate must be eligible to vote in the judicial district in which he or she is appointed or seeking election for 54 days prior to his or her appointment or election.²⁶

Municipal court judges must be admitted to practice before the Supreme Court of the state for at least five years immediately preceding their appointment or election.²⁷

Prior to 1975, a person was eligible for appointment or election to the office of judge of the justice court if he or she was an attorney admitted to the California State Bar or if he or she had passed a qualifying examination given by the Judicial Council. However, legislation was enacted in 1974 which required that a justice court judge be a member of the State Bar and eliminated the alternative method of passing the council's qualifying examination.²⁸ The statute was enacted after the Supreme Court determined that a defendant had the right to an attorney judge in those cases that could possibly result in his incarceration.²⁹

Municipal and justice courts exercise original jurisdiction in most civil cases where the amount involved is \$25,000 or less.³⁰

Unlike vacancies in Supreme, appellate, superior and municipal courts, which are filled by the Governor, a vacancy occurring in the justice court is filled by appointment of the board of supervisors, or, if the board so decides, by a special election.³¹

Terms of Office and Salaries of Judges

The following table shows the order in which different courts of this state are set up, and the terms of office and salaries of the judges:³²

Court	Term (years)	Annual salary
Supreme Court	12	Chief Justice—\$133,459 Associate Justices—\$127,267
Courts of appeal	12	Justices—\$119,314
Superior court	6	Judges—\$104,262
Municipal court	6	Judges—\$95,214
Justice court	6	Judges— ³³

²⁴ Constitution, Article VI, Section 5; Government Code, Section 71040.
²⁵ Government Code, Section 71145.
²⁶ Government Code, Sections 71140, 71701. For residency requirements for justice court judges, see, Osborne v. La Font, 60 Cal. App. 3d 875; 58 Op. Att'y Gen. 368.
²⁷ Constitution, Article VI, Section 15.
²⁸ Government Code, Section 71701.
²⁹ Gordon v. Justice Court, 12 Cal. 3d 323.
³⁰ Code of Civil Procedure, Section 86.
³¹ Government Code, Section 71180.3.
³² Constitution, Article VI, Section 16(a), (c); Government Code, Sections 68200–68203, 71145. Salaries listed are effective through 12/94.
³³ Determined by county boards of supervisors. Government Code, Section 71600.

Judges—Disqualification and Suspension

The Constitution provides several methods for the removal of justices and judges in California. Procedures for their removal by impeachment and recall election have been discussed previously.

A judge is disqualified without loss of salary if there is pending an indictment or information charging him or her in the United States with a crime punishable as a felony under either California or federal law.

The Supreme Court may suspend a judge without salary when in the United States he or she pleads guilty or pleads no contest, or if he or she is found guilty of any crime that involves moral turpitude or is punishable as a felony under California law. If his or her conviction becomes final, the Supreme Court must remove him or her from office; if it is reversed, he or she shall be reinstated and shall be paid a salary for the period of suspension. A judge removed by the Supreme Court is ineligible for judicial office and, unless otherwise ordered by the court, is suspended from practicing law in California.

The Supreme Court also passes upon the recommendations of the Commission on Judicial Performance concerning the retirement, censure or removal of any judge.³⁴

Judicial Administration

To assist the courts in their task, the Constitution provides for certain agencies to deal with judicial administration: the Judicial Council, whose principal function is to improve and expedite the administration of justice; the Commission on Judicial Appointments, which confirms all gubernatorial appointees to the Supreme Court and the courts of appeal; the Commission on Judicial Performance, which treats the censure, removal or retirement of judges for misconduct or disability.

The Judicial Council

The Constitution provides for a Judicial Council, consisting of 21 members: the Chief Justice (Chairperson), one additional Justice of the Supreme Court, three justices of the courts of appeal, five superior court judges, three municipal court judges, two justice court judges (each judge member is appointed by the chairperson for a two-year term), four members of the State Bar (appointed by the governing body of the California State Bar), and a Member of each house of the Legislature (the Assembly Member appointed by the Speaker, the Senate Member appointed by the Rules Committee of the Senate).³⁵

An executive officer, the Administrative Director of Courts, is appointed by the council and serves at its pleasure. He or she performs such functions as delegated by the council or by its chairperson.³⁶ The salary and qualifications of the director are identical to those of a judge of a court of appeal.³⁷

³⁴ *Constitution*, Article VI, Section 18.

³⁵ *Constitution*, Article VI, Section 6; *Assembly Rule 26(1)*; *Senate Rule 13*.

³⁶ *Constitution*, Article VI, Section 6.

³⁷ *Government Code*, Section 68500.5.

Members of the Judicial Council receive no compensation for their services, but are allowed their necessary expenses for travel, board and lodging incurred in the performance of their duties as members.³⁸

The primary duty of the council is to improve the administration of justice. It is required to make a survey of judicial business and make recommendations to the courts and report annually to the Governor and the Legislature.

The council also adopts court rules of administration, practice, and procedure, which are not inconsistent with statutes, in the interests of uniformity and for expediting the business of the courts.

The Constitution requires the Chief Justice of the California Supreme Court to expedite the judicial business of the state, and to equalize the work of the various judges. To do this, it is necessary to bring the judges where the work is, that is, to assign judges from an area with a light caseload to those areas that have heavy calendars. To accommodate the Chief Justice in this task, the Constitution authorizes him or her to assign a judge from one court to another. Such assignment by the Chief Justice is mandatory, and the assigned judge may not refuse to accept, except that a judge of a higher court may only be assigned to a lower court with his or her consent. To assist the Chief Justice in making these assignments, judges are required to report to him or her concerning the condition of the business in their courts.³⁹

In addition, the council has performed such other duties as requested by the Legislature. For example, a study of the procedure of administrative agencies and the judicial review of their decisions was provided to the Legislature, and as a result the Administrative Procedure Act, requiring uniform rules in issuing, suspending and revoking professional and business licenses was passed in 1945.⁴⁰ In response to another legislative request, the council recommended a plan for reorganization of the lower court system in California, which culminated in the reduction in the number and kinds of lower courts. Pursuant to statutory authority, the council also conducts orientation seminars for judges, the primary purpose being to keep them informed of new developments in the law and to promote uniformity in judicial procedure.⁴¹

Commission on Judicial Performance

In November 1960, the people approved a constitutional amendment authorizing the establishment of a Commission on Judicial Performance with power to recommend to the Supreme Court the removal, censure or retirement of any judge.⁴²

On recommendation of the Commission on Judicial Performance, the Supreme Court may censure or remove any judge of any court in

³⁸ *Government Code*, Section 68510.

³⁹ *Constitution*, Article VI, Section 6; *Government Code*, Section 68548.

⁴⁰ *Statutes of 1945*, Chapter 111; see *Government Code*, Section 11370 *et seq.*

⁴¹ *Government Code*, Section 68551. For the statutory duties and provisions governing the Judicial Council, see *Government Code*, Sections 68500–68554.

⁴² *Constitution*, Article VI, Sections 8, 18(b), 18(c). The original name of the commission was the Commission on Judicial Qualifications. The name was changed by constitutional amendment to the Commission on Judicial Performance in 1976.

this state for willful misconduct in office, for persistent failure or inability to perform his or her duties, for habitual intemperance in the use of intoxicants or drugs, or for conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or may retire a judge because of a disability which seriously impairs the performance of the duties of his or her office which is, or is likely to become, permanent.⁴³

The Supreme Court, upon the commission's recommendation, may suspend a judge who pleads no contest or guilty or who is found guilty of a felony or for any other crime involving moral turpitude.⁴⁴

To conduct its investigation into the fitness of state court judges, the commission may hire such employees as it deems necessary and require state and local agencies to cooperate and provide information in connection with its investigation. It may administer oaths and issue subpoenas requiring the attendance of witnesses or the production of records relevant to its proceedings.⁴⁵

The Commission on Judicial Performance consists of two justices of courts of appeal, two superior court judges, and one municipal court judge, each appointed by the Supreme Court; two members of the State Bar, who must have practiced law in this state for at least 10 years and who are selected by the Board of Governors of the State Bar; and two citizens, neither of whom shall be judges, active or retired, nor a member of the State Bar, and who are appointed by the Governor, subject to approval by a majority of the Members of the Senate.⁴⁶

The members of the commission serve up to two four-year terms and the commission elects one of its own members to serve as chairman. Any vacancies occurring on the commission are filled by the appointing power.⁴⁷

Commission on Judicial Appointments

The Commission on Judicial Appointments has the obligation of confirming or rejecting nominees or appointees of the Governor to vacancies on the courts of appeal or the Supreme Court of the State of California. The commission holds a veto power over the prospective nominees and appointees to these courts.⁴⁸

The commission consists of the Chief Justice of the Supreme Court, the Attorney General, and the presiding justice of the district court affected (or if there be more than one presiding justice in the district, the one who has presided the longest). In the event the vacancy occurs on the Supreme Court, the senior presiding justice of the courts of appeal shall serve in addition to the Chief Justice and the Attorney General.⁴⁹

⁴³ *Constitution*, Article VI, Section 18(c).

⁴⁴ *Constitution*, Article VI, Section 18(b).

⁴⁵ *Government Code*, Sections 68702, 68725, 68750.

⁴⁶ *Constitution*, Article VI, Section 8.

⁴⁷ *Id.*; see also, *Government Code*, Section 68704.

⁴⁸ *Constitution*, Article VI, Section 16(d).

⁴⁹ *Constitution*, Article VI, Section 7.



The California State Assembly in Session, April 26, 1927.